

# United States Senate

WASHINGTON, DC 20510

December 10, 2009

The Honorable Daniel Inouye  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20105

The Honorable Thad Cochran  
Ranking Member  
Committee on Appropriations  
United State Senate  
Washington, D. C. 20105

Dear Chairman Inouye and Ranking Member Cochran:

We write to you in regards to a provision in the *National Defense Authorization Act for Fiscal Year 2010* that we believe could adversely impact economic development opportunities provided by the Native 8(a) contracting program.

We are concerned that the language of section 811 in the *National Defense Authorization Act for Fiscal Year 2010* effectively removes the long-standing exemption from requirements that had applied to all Small Business Act 8(a) contracts, but which would now apply only to Native 8(a) participants. Section 811 of the *National Defense Authorization Act for Fiscal Year 2010* could also be interpreted to reach beyond the contracts administered by the Department of Defense to require that all Federal agencies adopt a justification and approval procedure for sole-source contract awards that exceed a certain threshold amount.

Section 811's requirement that "approval" must be provided by the head of the relevant agency raises concerns about the effect such a process will have on all federal agency contracting officers. Under these new requirements, contracting officers could be reluctant to make 8(a) sole-source awards to Native 8(a) contractors because, even if the award is fully justifiable, the new justification requirement will add paperwork burdens and time delays in seeking and obtaining the requisite agency head approval.

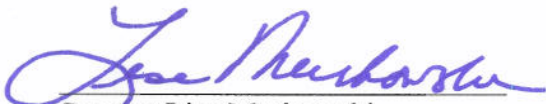
The 8(a) provisions applicable to Native 8(a) companies have proven successful in implementing the federal Indian policy of promoting Indian self-determination, self-sufficiency and economic development. Removing such provisions without consultation with Indian tribes and relevant agencies could potentially have unintended consequences.

Thus, we are seeking your support for inclusion of the following provision in the *National Defense Appropriations Act for Fiscal Year 2010* conference report, that would merely delay the implementation of section 811 until the Administrator of the Small Business Administration, in conjunction with the Office of Small Business Programs in the Department of Defense, has conducted an assessment and prepared a report on the impacts of section 811 on the contracting procedures of each Federal agency and the affected program participants. The suggested language is as follows:

*"None of the funds appropriated in this or any other Act shall be used to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010, until the Administrator of the Small Business Administration, in collaboration with the Office of Small Business Programs for the Department of Defense, conducts an assessment of and prepares a report on the impacts of section 811 on the contracting procedures of the Department of Defense and every other Federal agency to which section 811 applies. Such assessment shall include an analysis of any special circumstances, contingency contracting, and needs of the affected program participants in the program established by section 8(a) of the Small Business Act (15 U.S.C. 637(a)), and any recommendations resulting from consultations with representatives of the affected program participants. The Administrator shall submit a report of the findings of the assessment and consultations to the Senate Committee on Small Business and Entrepreneurship, the House Committee on Small Business, the Senate Committee on Indian Affairs and the House Natural Resources Committee."*

Thank you for taking our request into consideration.

Sincerely,



Senator Lisa Murkowski



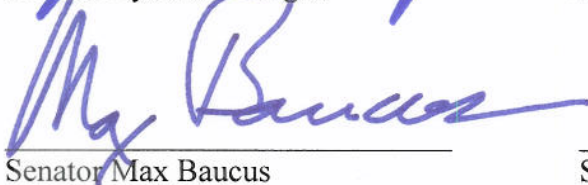
Senator Mark Begich



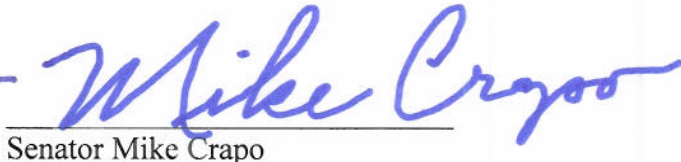
Senator Byron L. Dorgan



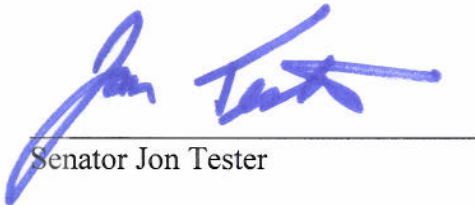
Senator James M. Inhofe



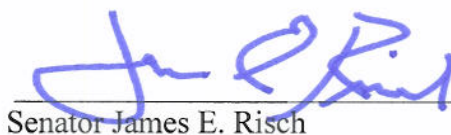
Senator Max Baucus



Senator Mike Crapo



Senator Jon Tester



Senator James E. Risch

cc: Senators Byrd, Leahy, Harkin, Durbin, Feinstein, Mikulski, Kohl, Specter, Bond, McConnell, Shelby, Gregg, Hutchison, Bennett, and Brownback